

Legal Review



PLANNING LAWS – AN UPDATE

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In the Spring 2002 edition of this review, I gave an outline of the proposed new planning law. At that time it had recently been brought before the States, but was then delayed for six months whilst further consultations took place and the Environment Department (then the Island Development Committee) reported back to the States.

In June 2002, the States approved the general principles embodied in the draft law, with the exception of four areas, into which Environment was instructed to undertake further research.

The most controversial of those items was the constitution of the tribunal which will sit to hear appeals from decisions made by Environment in response to planning applications. Environment proposed that the appeal would be made to a single adjudicator, who would be experienced in planning matters (and almost certainly a non-resident of Guernsey). Several States members considered that appeals should be heard by a panel consisting of three persons, only one of which would be a planning professional. The arguments in support of this proposal were that:-

1. Determination of appeals by a panel of three would be inherently fairer than relying on a single adjudicator;
2. Most tribunals operate on the basis of a panel of three;
3. Many appeals involve subjective judgements on design matters and the decision making process should ensure that decisions “appropriate to Guernsey” would be reached. In this respect, it was thought that a UK based planning inspector would not have the knowledge and understanding of the island or the sensitivity towards local influences that a panel, including Channel Island resident professionals and lay members, would have.

The issues were brought back to the States in January 2005. Environment, having undertaken further research, maintained its position in relation to the composition of the appeals tribunal, principally on the ground of cost and the potential for delay if a tribunal of three is used.

The States resolved to adopt the three person panel proposal, which will be able to reassess the merits of a planning application (unlike the present system). The system should also enable applicants to pursue appeals without the need for legal assistance.

The law has now been approved and will be submitted for Royal Assent.

In the month prior to the recent States meeting, there was a fair amount of behind the scenes activity in relation to another aspect of the new law, which had generated a lot of discussion when public consultations took place in 2002. This relates to the right of Environment to take action against the owner of a property which has been altered without planning permission, even if that owner did not carry out the works himself.

The concerns raised were that a purchaser of property would require a binding assurance, that at the time he purchased the property, it was totally compliant with the planning laws. It was felt that this could only be achieved by a certificate issued by Environment on the application of the purchaser’s advocate. Concern was expressed that this process could be time consuming and lead to a breakdown in the smooth process of property transfer which presently exists.

A meeting was held at the end of January between senior planning officers and representatives of both the Guernsey Bar and local estate agents. At the meeting it was confirmed by Environment that a certificate would be issued, upon which a purchaser could rely, by way of confirmation that Environment would not be able to take enforcement action against the purchaser in respect of breach of any planning matters that may have occurred prior to the date of the certificate. In most cases, it appears that the certificate will be issued without a site visit being undertaken and it was suggested that the certificates could generally be issued by return of post, upon receipt of a standard form of application.

The mechanism to introduce the certification procedure will be established by Ordinance and therefore the provisions of the new law regarding enforcement against subsequent purchasers will not become operative until the Ordinance comes into force. Environment also confirmed that a consultation would take place in relation to the content of the Ordinance.

This meeting has allayed some of the concerns that previously existed, but until the system is in operation, it is impossible to speculate whether or not it will cause delays in the conveyancing system.

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